

FEB 29 2016



February 23, 2016

Via Certified Mail and Email

Citizen Suit Coordinator
Dept. of Justice, ENRD
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415
richard.norwood@usdoj.gov

Gina McCarthy, Administrator
U.S Environmental Protection Agency
Office of the Administrator, Mail Code 1101A
1200 Pennsylvania Avenue NW
Washington, DC 20460

Re: [Proposed] Consent Decree – *San Francisco Baykeeper v. CSL Operating, LLC*

Dear Citizen Suit Coordinator and Administrator McCarthy:

Enclosed, please find a copy of a [Proposed] Consent Decree between Baykeeper and CSL Operating, LLC ("CSL"), for your review. The [Proposed] Consent Decree resolves Baykeeper's claims against CSL for Clean Water Act violations alleged in the complaint. (*San Francisco Baykeeper v. CSL Operating, LLC*, Case No. 5:15-cv-5633-BLF). The [Proposed] Consent Decree requires CSL to make specific changes at its facility, closely monitor its stormwater discharges, and to take further measures if its pollution discharges continue to exceed numeric action levels as established in the California Industrial Stormwater General Permit and/or water quality standards.

If you have any questions or comments concerning the terms of the [Proposed] Consent Decree, please contact me at (510) 735-9700 x106 or erica@baykeeper.org.

Sincerely,

Erica A. Maharg
Staff Attorney, San Francisco Baykeeper

cc: Jared Blumenfeld, Regional Administrator, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105 (U.S. mail only)

Pete Nyquist, attorney for CSL Operating. LLC (email only)



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10 Attorneys for Plaintiff
11 SAN FRANCISCO BAYKEEPER

12
13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 SAN FRANCISCO BAYKEEPER, a California
17 non-profit corporation,

18 Plaintiff,

19 v.

20 CSL OPERATING, LLC,

21 Defendant.

Case No.: 5:15-cv-5633-BLF

[PROPOSED] CONSENT DECREE

**(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 *et seq.*)**

1 **CONSENT DECREE**

2 WHEREAS, San Francisco Baykeeper, Inc. ("Baykeeper") is a non-profit public benefit
3 corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and
4 natural resources of the San Francisco Bay and other area waters;

5 WHEREAS, CSL Operating, LLC ("CSL") operates a facility located at 529 Aldo Avenue, Santa
6 Clara, California 95054, that performs plating, coating, and related services (the "Facility");

7 WHEREAS, Baykeeper and CSL are each referred to as a "Party" and collectively referred to as
8 the "Parties" to this Consent Decree ("Consent Decree");

9 WHEREAS, stormwater discharges associated with industrial activity at the Facility are regulated
10 pursuant to the National Pollutant Discharge Elimination System ("NPDES") General Permit No.
11 CAS000001 [State Water Resources Control Board], Water Quality Order No. 2014-57-DWQ, issued
12 pursuant to Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342 (hereinafter
13 "Industrial Stormwater Permit"). These industrial activities include, *inter alia*, conducting plating and
14 coating processes.

15 WHEREAS, the Industrial Stormwater Permit includes the following requirements for all
16 permittees, including CSL: (1) develop and implement a stormwater pollution prevention plan
17 ("SWPPP"), (2) control pollutant discharges using, as appropriate, best available technology
18 economically achievable ("BAT") or best conventional pollutant control technology ("BCT") to prevent
19 or reduce pollutants, (3) implement BAT and BCT through the development and application of Best
20 Management Practices ("BMPs"), which must be included and updated in the SWPPP, and, (4) when
21 necessary, implement additional BMPs to prevent or reduce any pollutants that are causing or
22 contributing to any exceedance of water quality standards;

23 WHEREAS, on September 17, 2015, Baykeeper provided a 60-day notice to CSL, the
24 Administrator of the U.S. Environmental Protection Agency ("EPA"), the Executive Director of the
25 State Water Resources Control Board ("State Water Board"), the Executive Officer of the Regional
26 Water Quality Control Board, San Francisco Bay Region ("Regional Water Board"), and the Regional
27 Administrator of EPA Region IX, of Baykeeper's intent to file suit ("60-Day Notice") under Section
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505(b)(1)(a) of the Federal Water Pollution Control Act, 33 U.S.C. § 1365(b)(1)(A) (“Clean Water Act” or “the Act”), alleging violations of the Act and the Industrial Stormwater Permit and its previous version, Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order 97-03-DWQ), at the Facility;

WHEREAS, on December 10, 2015, Baykeeper filed a complaint (“Complaint”) alleging certain violations of the Act and the Industrial Stormwater Permit and its previous version, Water Quality Order No. 92-12-DWQ (as amended by Water Quality Order 97-03-DWQ), at the Facility;

WHEREAS, CSL denies all allegations and claims contained in the 60-Day Notice and Complaint, and reserves all rights and defenses with respect to such allegations and claims;

WHEREAS, the Parties believe it is in their mutual interest and choose to resolve in full Baykeeper’s allegations in the 60-Day Notice and Complaint through settlement and avoid the cost and uncertainties of further litigation;

WHEREAS, this Consent Decree shall be submitted to the United States Attorney General and the Administrator of EPA for a 45-day statutory review period, pursuant to 33 U.S.C. section 1365(c); and shall thereafter be submitted for entry as an Order of the Court (“Order”), the date of which Order shall be referred to herein as the “Court Approval Date”;

NOW THEREFORE IT IS HEREBY STIPULATED BETWEEN THE SETTLING PARTIES, AND ORDERED AND DECREED BY THE COURT, AS FOLLOWS:

I. OBJECTIVES

1. It is the express purpose of the Parties to further the objectives set forth in the Clean Water Act, 33 U.S.C. §§ 1251 et seq., and to resolve those issues alleged by Baykeeper in its 60-Day Notice and Complaint. In light of these objectives and as set forth fully below, CSL shall exercise its best efforts to comply with the provisions of this Consent Decree and to comply with the Industrial Stormwater Permit and all applicable provisions of the Clean Water Act.

II. TERM OF CONSENT DECREE

2. **Effective Date:** This Consent Decree shall be effective upon mutual execution by the Parties (“Effective Date”), but shall not be enforceable until the Court Approval Date.

1 3. **Term of Consent Decree:** This Consent Decree shall continue in effect until September 31,
2 2018 (the "Term"), at which time the Consent Decree and all obligations under it shall automatically
3 terminate, unless one of the Parties has invoked Dispute Resolution in accordance with Paragraph 29.

4 4. **Early Termination:** If CSL should cease industrial operations at the Facility and file a Notice
5 of Termination ("NOT") under the Industrial Stormwater Permit prior to the end of the Term of this
6 Consent Decree, CSL shall send Baykeeper a copy of the proposed NOT concurrent with or immediately
7 following its submittal to the Regional Water Board. Within ten (10) days of the Regional Water
8 Board's approval of the NOT, CSL shall notify Baykeeper in writing of the approval and remit all
9 outstanding payments, including stipulated payments, to Baykeeper. In the event a new successor or
10 assign continues industrial operations at the site and assumes responsibility for implementation of this
11 Consent Decree pursuant to Paragraph 50, CSL shall notify Baykeeper within ten (10) days of the
12 transition.

13 III. BEST MANAGEMENT PRACTICES

14 5. In order to further reduce or further prevent pollutants associated with industrial activity from
15 discharging via stormwater to the waters of the United States, CSL shall implement additional
16 appropriate structural and non-structural BMPs to, at a minimum, comply with the requirements of the
17 Industrial Stormwater Permit.

18 6. **Site Map:** Within thirty (30) days of the completion of the BMP steps set forth in Paragraph 8
19 below, CSL shall update the Site Map included in the Facility SWPPP to comply with the Industrial
20 Stormwater Permit, Section X.E. Specifically, the Site Map shall clearly denote (a) the direction of
21 stormwater flow for each drainage area of the Facility, (b) Facility boundary, (c) known or suspected
22 drop inlets, (d) ground type (pervious or impervious), (e) berms and the materials they are composed of,
23 (f) any permanent structures and features, (g) discharge points, (h) sampling points, and (i) all other
24 physical structures or items relevant under the Industrial Stormwater Permit and this Consent Decree.
25 During the Term of the Consent Decree, if CSL makes significant changes to the Facility, such as
26 moving a discharge or sampling point, modifying the topography of the site so as to change a drainage
27 area, or removing or adding structural BMPs, CSL shall update the SWPPP within forty-five (45) days
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1 and submit the revised SWPPP to Baykeeper.

2 7. **Non-Structural Best Management Practices:** Beginning on the Effective Date, CSL shall
3 implement the following non-structural BMPs:

4 A. Roof Washing: CSL shall engage in roof washing of the Facility roof on a quarterly basis
5 (every three months) ("Default Roof Washing Schedule"), as follows:

6 i. The first roof washing shall take place on the first business day of the month that
7 follows the Effective Date and that is not a state or federal holiday.

8 ii. Thereafter, roof washing shall take place every three months on the first business
9 day of the month that is not a state or federal holiday.

10 iii. Roof washing shall consist of a complete rinse of all readily accessible surface
11 areas on the roof of the Facility, along with the pumping, collection, and treatment of the resultant rinse
12 water. No untreated discharge to storm drains shall result from roof washing activities.

13 iv. If field measurements and laboratory data indicate that more frequent or less
14 frequent roof washing (i.e., other than quarterly) achieves full compliance with the target levels in
15 Exhibit I ("Target Levels"), CSL may provide Baykeeper with a written proposal seeking modification
16 of the Default Roof Washing Schedule, which proposal Baykeeper will be required to accept or reject in
17 writing within thirty (30) days of the proposal. A non-response by Baykeeper within the thirty (30) day
18 period shall be deemed an approval of a proposal by CSL seeking modification of the Default Roof
19 Washing Schedule.

20 v. Irrespective of the Default Roof Washing Schedule or any approved modifications
21 thereto, roof washing shall not be required on any day on which 24-hour total precipitation in San Jose
22 in the previous two (2) weeks exceeds one (1) inch. To the extent that roof washing is not required, CSL
23 shall be permitted to skip the scheduled roof washing for that quarter and resume roof washing on the
24 designated day in the following quarter. The 24-hour total precipitation measurements for San Jose shall
25 be taken from the National Weather Service Forecast Office's website, <http://www.wrh.noaa.gov>.

1 vi. Roof activities, including roof washing excused in accordance with Paragraph
2 7.A.v, shall be logged by CSL personnel and will be made available to Baykeeper within fourteen (14)
3 days of receipt of a written request.

4 B. Site Sweeping: On a weekly basis between October 1 and May 31 of each year ("Wet
5 Season"), CSL shall sweep readily accessible paved areas of the Facility by hand or vacuum. Sweeping
6 activities shall be logged by CSL personnel and will be made available to Baykeeper within fourteen
7 (14) days of receipt of a written request.

8 **8. Structural Best Management Practices:**

9 A. Roof Drain Filters: CSL shall install roof drain filters at each of the two downspouts that
10 extend from the roof of the Facility towards the ground of the Facility to help ensure that Facility
11 stormwater discharges do not exceed the Target Levels, as follows:

12 i. CSL shall develop a testing program for stormwater at the two Facility
13 downspouts to evaluate and confirm the chemical composition of stormwater at each location;

14 ii. CSL shall utilize data obtained from the testing program to develop specifications
15 for the roof drain filters;

16 iii. CSL shall provide Baykeeper with the results of initial testing and the roof drain
17 filters it has determined to be appropriate and technically-sufficient downspout filters, based on its
18 evaluation of data pursuant to Paragraph 8.i-8.ii above. Baykeeper shall accept or provide proposed
19 modifications to CSL's proposal, if any, to CSL within ten (10) business days of receipt. A non-
20 response by Baykeeper within the ten (10) day period shall be deemed an approval of the proposal by
21 CSL. CSL shall order and install the proposed roof drain filters, incorporating any proposed
22 modifications by Baykeeper, unless CSL timely invokes the Dispute Resolution provisions in
23 accordance with Paragraph 29;

24 iv. CSL shall engage in commercially-reasonable efforts to complete the steps set
25 forth in Paragraph 8.i-iii above within three (3) months of the Effective Date. If CSL determines the
26 roof drain filters will not be fully installed and operational within this time period, it shall promptly
27 notify Baykeeper of the delay and the modified estimated date of installation.

v. To the extent that the foregoing measures prove ineffective at ensuring that stormwater discharges do not exceed the Target Levels, CSL shall initiate timely efforts to meet and confer with Baykeeper to evaluate alternate and/or additional BMPs.

B. CSL shall diligently file and pursue all required permit applications for the structural BMPs and shall diligently procure contractors, labor, and materials needed to complete all structural BMPs by the required deadlines.

C. Maintenance of BMP Structural Controls: Beginning on the Effective Date or the date of final installation of roof drain filters, CSL shall maintain all structural BMPs at the Facility in good operating condition and shall promptly repair any damaged or degraded structural BMPs.

9. **Employee Training**: CSL shall develop and implement an employee training program that meets the following requirements:

A. Within thirty (30) days of the Effective Date, CSL shall develop and implement a training program, including any training materials needed for effective implementation of the training program, for the Facility ("Training Program"). The Training Program shall ensure: (1) that there are a sufficient number of designated employees delegated to achieve compliance with the Industrial Stormwater Permit and this Consent Decree, and (2) that these designated employees are properly trained to perform the activities required by the Industrial Stormwater Permit and this Consent Decree. At a minimum, the Training Program shall require the following:

i. Language. CSL shall conduct the Training Program in the language or languages in which all designated employees participating are fluent;

ii. BMP Training. CSL shall train designated employees on the BMPs included in this Consent Decree and the SWPPP to ensure that BMPs are implemented effectively and on schedule, and structural BMPs are maintained properly. CSL shall train designated employees on their specific responsibilities in implementing BMPs.

iii. Stormwater Sampling Training. CSL shall designate an adequate number of employees necessary to collect stormwater samples as required by this Consent Decree. The Training

1 Program shall include the proper sampling protocols to ensure stormwater samples are properly
2 collected, stored, and submitted to a certified laboratory.

3 iv. Visual Observation Training. CSL shall provide training on how and when to
4 properly conduct visual observations to all employees who will be regularly tasked with performing
5 visual observations at the Facility.

6 v. Non-Stormwater Discharge Training. CSL shall train designated employees at
7 the Facility on the Industrial Stormwater Permit's prohibition of non-stormwater discharges, so that
8 designated employees are familiar with the concept of non-stormwater discharges, that non-stormwater
9 discharges can result from improper surface washing or dust control methods, and how to detect and
10 prevent non-stormwater discharges.

11 vi. All employees at the Facility who are responsible for Facility maintenance and
12 management, and specifically stormwater management, shall participate in the Training Program within
13 thirty (30) days of the Effective Date and as needed thereafter. New employees who will be responsible
14 for Facility maintenance and management, and specifically stormwater management, shall participate in
15 the Training Program within thirty (30) days of their hiring date.

16 vii. A representative, agent, consultant, or attorney of CSL who is familiar with the
17 requirements of this Consent Decree and the Industrial Stormwater Permit shall administer the Training
18 Program.

19 viii. CSL shall maintain training records to document compliance with this section,
20 and shall provide Baykeeper with a copy of these records within fourteen (14) days of receipt of a
21 written request.

22 ix. If and when appropriate, CSL shall integrate any new training requirements
23 resulting from this Consent Decree into the Facility SWPPP. CSL shall also update the SWPPP, if and
24 when appropriate, to identify the designated persons (or company positions) responsible for carrying out
25 stormwater management, monitoring, sampling, and SWPPP implementation.

26 **10. Amendment of SWPPP:**
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1 A. Within thirty (30) days of CSL's completion of the steps set forth in Paragraph 8 above,
2 CSL shall amend the Facility SWPPP to incorporate the requirements and BMPs set forth in this Section
3 III of the Consent Decree and Section X of the Industrial Stormwater Permit and submit the updated
4 SWPPP to Baykeeper within ten (10) business days thereafter. Baykeeper shall have thirty (30) days
5 from receipt of the amended SWPPP to propose any changes to the SWPPP. Within thirty (30) days of
6 notification by Baykeeper of any proposed changes to the SWPPP, CSL shall incorporate Baykeeper's
7 changes to the amended SWPPP unless CSL timely invokes the Dispute Resolution provisions in
8 accordance with Paragraph 29. Compliance with the SWPPP, as amended in accordance with this
9 Paragraph, shall be at all times a requirement of this Consent Decree.

10 B. CSL shall revise the Facility SWPPP in accordance with requirements set forth in the
11 Industrial Stormwater Permit.

12 C. CSL shall submit any revised SWPPP to Baykeeper within ten (10) days of the revisions.
13 Baykeeper shall provide comments, if any, to CSL within thirty (30) days of receipt of the revised
14 SWPPP. Within thirty (30) days of notification by Baykeeper of any proposed changes to the SWPPP,
15 CSL shall incorporate Baykeeper's changes to the amended SWPPP unless CSL timely invokes the
16 Dispute Resolution provisions in accordance with Paragraph 29.

17 11. **Additional BMPs:** The BMPs included in this Section constitute an approach to stormwater
18 management at the Facility for the 2015-2016 Wet Season. If, after implementing these BMPs, the
19 sampling conducted in accordance with Section IV indicates that the Facility's stormwater discharges
20 continue to exceed the Target Levels, or otherwise do not meet water quality standards, CSL shall
21 propose additional BMPs as part of any Action Plan prepared in accordance with Paragraphs 18-20.

22 IV. **SAMPLING, MONITORING, INSPECTION & REPORTING**

23 12. **Wet Season Sampling:** In any Wet Season during the Term of the Consent Decree, beginning
24 with the 2015-2016 Wet Season, CSL shall collect and analyze samples from all designated discharge
25 points during four (4) qualifying storm events, as defined in the Industrial Stormwater Permit, Section
26 XI.B ("QSEs"). Each stormwater sample must be analyzed for the presence of each of the parameters
27 listed on Exhibit 1.

1 13. In the event that CSL is unable to collect four (4) samples in a Wet Season, CSL shall explain in
2 writing in the End-of-Season Summary under Paragraph 17 why it was unable to collect the required
3 sample(s).

4 14. Should industrial processes materially change at the Facility, CSL shall conduct sampling for any
5 additional analytical parameters listed in Table 1 of the Industrial Stormwater Permit and additional
6 toxic priority pollutants listed in 40 C.F.R. § 131.38 which CSL and its consultants believe likely to be
7 present in the Facility's stormwater discharges in significant quantities as a result of the changed
8 industrial processes. CSL shall notify Baykeeper of any material change(s) in industrial processes at the
9 Facility within thirty (30) days of such change(s).

10 15. **Certified Lab:** Except for pH samples, CSL shall have all stormwater samples collected
11 pursuant to this Consent Decree delivered to a California state certified environmental laboratory for
12 analysis within the time needed for analysis within laboratory method allowable hold times. The
13 laboratory shall thereafter conduct analysis sufficient to detect individual constituents at or below the
14 Target Levels.

15 16. **Sample Result Reporting:** After the Effective Date, CSL shall provide complete results from
16 sampling and analysis to Baykeeper within ten (10) calendar days of receipt of the final laboratory report
17 generated from each sampling event. CSL shall upload to the Storm Water Multiple Application and
18 Report Tracking System ("SMARTS") all stormwater sampling and analysis conducted pursuant to this
19 Consent Decree within thirty (30) days of receipt of the final laboratory report generated from each
20 sampling event.

21 17. **End-of-Season Summary:** By July 15 following each Wet Season that occurs during the Term
22 of the Consent Decree, CSL shall prepare and send to Baykeeper an End-of-Season Summary that
23 includes (1) a summary chart with all of the sample results from the previous Wet Season including the
24 constituent concentration(s) from sample(s) collected at the Facility exceeding the Target Levels
25 ("Exceedance(s)"); and (2) identification of any new BMP(s) that CSL has implemented or will
26 implement that are not already discussed in a prior End-of-Season Summary or Action Plan for the
27 immediately previous Wet Season.

1 **18. Action Plan:** If any stormwater sample result during a Wet Season exceeds any Target Levels,
2 CSL shall submit an Action Plan in addition to an End-of-Season Summary by July 15.

3 **19. Contents of Action Plan:** If an Action Plan is required, it shall include the following:

4 A. The possible sources of the Exceedance(s) during the applicable Wet Season;

5 B. A proposal for and evaluation of new site-specific BMPs designed to reduce pollutants in
6 future stormwater discharges to the Target Levels and/or to achieve BAT and BCT for those
7 constituents;

8 C. Data, drawings, and other design rationale demonstrating that the proposed site-specific
9 BMPs will achieve BAT and BCT; and

10 D. A schedule to implement any revised and/or additional BMPs by the earliest practicable
11 time, and no later than October 1 of the next Wet Season. In any Action Plan, CSL shall reasonably
12 consider appropriate structural BMPs, as necessary, to adequately address any continued Exceedances.

13 **20. Baykeeper Review of Action Plan:** Baykeeper shall have thirty (30) days from receipt of
14 CSL's Action Plan to propose revisions to the Action Plan. However, if Baykeeper notifies CSL within
15 thirty (30) days of receipt of the Action Plan that it is unable to provide comments within thirty (30)
16 days, Baykeeper shall be granted, as a matter of right, an additional fifteen (15) days to propose
17 revisions to the Action Plan. Within thirty (30) days of receiving Baykeeper's proposed revisions, CSL
18 shall consider each of Baykeeper's recommended revisions to the Action Plan and accept them or timely
19 request to meet and confer, in accordance with the Dispute Resolution provisions of Paragraph 29.

20 **21. Implementation of Action Plan:**

21 A. CSL shall implement the Action Plan(s) adopted pursuant to this Consent Decree as an
22 obligation of this Consent Decree.

23 B. CSL shall diligently file and pursue all required local agency applications for permits
24 and/or approvals for the BMPs included in any Action Plan. CSL shall further diligently pursue the
25 procurement of contractors, labor, and materials to complete all BMPs by the October 1 deadline.

26 C. Within thirty (30) days after BMPs set forth in an Action Plan pursuant to this Consent
27 Decree are implemented, CSL shall amend the Facility SWPPP to include all BMP revisions or
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1 additions not otherwise already implemented and included in the SWPPP and shall provide Baykeeper
2 with a copy of such revised SWPPP.

3 D. Within thirty (30) days after BMPs set forth in an Action Plan pursuant to this Consent
4 Decree are implemented, all employees at the Facility who are responsible for Facility maintenance and
5 management, and specifically stormwater management, shall be trained, as needed, on the BMPs added
6 as a result of the Action Plan.

7 22. During each Wet Season, CSL has an ongoing obligation to evaluate the BMPs implemented at
8 the Facility and included in this Consent Decree and any current or previous Action Plans, and, if CSL
9 has exceeded Target Levels, make attempts to reduce the concentrations to Target Levels or otherwise
10 meet BAT or BCT, as appropriate, for the remainder of the Wet Season. CSL shall use the results from
11 subsequent stormwater samples as they become available to assist with their ongoing evaluation of the
12 effectiveness of BMPs.

13 23. **Site Access:** During the Term of this Consent Decree, CSL shall permit representatives of
14 Baykeeper to perform up to two (2) physical inspections per year of the Facility during operating hours
15 ("Site Inspection"). Baykeeper shall provide CSL a minimum of seventy-two (72) hours' notice in
16 advance of such Site Inspections. Baykeeper shall comply with all safety instructions provided to
17 Baykeeper by CSL's staff during all Site Inspections. During Site Inspections, Baykeeper shall be
18 allowed to inspect and sample any stormwater discharges, review logs, and take photos and/or videos.
19 Photos and videos of the Facility must be kept strictly confidential and may not be shared with anyone
20 other than Baykeeper's consultants and attorneys, unless CSL otherwise agrees to their release, as such
21 photos and videos may document CSL proprietary processes and/or trade secrets.

22 24. **Reports:** During the Term of this Consent Decree, CSL shall provide Baykeeper with a copy of
23 all documents submitted to the Regional Water Board or the State Water Board concerning the Facility's
24 compliance with the Industrial Stormwater Permit. Such documents and reports shall be transmitted to
25 Baykeeper via electronic mail at or around the time the documents are submitted to the Regional Water
26 Board or State Water Board.

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V. MITIGATION, FEES AND COSTS

25. **Environmental Mitigation Funding:** As mitigation for the alleged violations set forth in Baykeeper's 60-Day Notice and Complaint, within thirty (30) days of the Effective Date, CSL shall pay the sum of ten thousand dollars (\$10,000) to The Rose Foundation for Communities and the Environment, an environmental non-profit organization, for projects that will benefit the San Francisco Bay watershed. The Rose Foundation for Communities and the Environment reports the grant funding made with the tendered funds to the Court, U.S. Department of Justice, and the Parties, setting forth the recipient and purpose of the funds. Payment shall be made to The Rose Foundation for Communities and the Environment, 1970 Broadway, Suite 600, Oakland, California 94612, within thirty (30) days of the Effective Date, with notice to Baykeeper.

26. **Reimbursement of Fees and Costs:** CSL shall reimburse Baykeeper in the amount of thirteen thousand dollars (\$13,000) to help cover Baykeeper's investigation, expert, and attorneys' fees and costs, and all other reasonable costs incurred as a result of investigating the activities at the Facility related to this Consent Decree, bringing these matters to CSL's attention, and negotiating a resolution of this action. CSL shall tender said payment, payable to Baykeeper, within thirty (30) days of the Effective Date.

27. **Compliance Monitoring Funds:** CSL shall provide to Baykeeper a total of eight thousand dollars (\$8,000) for costs and fees associated with monitoring CSL's compliance with this Consent Decree through the termination date of this Consent Decree. The total compliance monitoring fund payment shall be made payable to Baykeeper within thirty (30) days after the Effective Date.

28. **Interest on Late Payments:** CSL shall pay interest on any payments, fees or costs owed to Baykeeper under this Consent Decree that Baykeeper has not received by the date due. The interest shall accrue starting the first day after the payment is due and shall be computed at 1.5% per month (18% per year). To the extent that CSL has invoked dispute resolution under Paragraph 29, interest shall not accrue until the dispute is resolved.

VI. DISPUTE RESOLUTION AND STIPULATED PENALTIES

29. **Dispute Resolution:** If a dispute under this Consent Decree arises or a Party believes that a

1 violation of this Consent Decree has occurred, the Party asserting the dispute or violation shall promptly
2 notify in writing the other Party. Any alleged violation under this Consent Decree capable of being
3 cured shall be deemed cured if, within five (5) business days of first receiving notice of the alleged
4 violation or within such other period approved in writing by the Party making such allegation, the Party
5 allegedly in violation has completed such cure. Otherwise, the Party asserting that a violation has
6 occurred shall follow the following dispute resolution procedure:

7 A. The Party shall schedule a meet and confer with the other Party within ten (10) business
8 days of receiving written notification of a request for a meeting to determine whether a violation of this
9 Consent Decree has occurred and to develop a mutually agreed upon plan, including implementation
10 dates, to resolve the dispute.

11 B. If the Parties fail to meet and confer or the meet and confer does not resolve the issue,
12 after at least seven (7) business days have passed after the meet and confer occurred or should have
13 occurred, either Party shall be entitled to all rights and remedies under the law, including bringing a
14 motion before the United States District Court for the Northern District of California for the limited
15 purpose of enforcing the terms of this Consent Decree.

16 C. The Parties shall be entitled to seek fees and costs incurred in any such action pursuant to
17 the provisions set forth in the Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), and
18 applicable case law interpreting such provisions.

19 **30. Stipulated Payments:** CSL shall pay the following stipulated payments during the Term of this
20 Consent Decree, unless CSL invokes the dispute resolution under Paragraph 29, and Baykeeper or a
21 court determines that CSL's alleged failure to comply was not a failure to comply, reasonably excused,
22 and/or timely cured.

23 A. \$500 for each failure to collect a sample required under this Consent Decree during the
24 2015-16 and any subsequent Wet Season;

25 B. \$100 per business day (Monday through Friday, excluding state and federal holidays)
26 after the report due date for each failure to timely submit any document, report, or other communication
27 required in this Consent Decree; and
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1 C. \$500 per day payment for every business day (Monday through Friday, excluding state
2 and federal holidays) past the due date that CSL fails to submit any payments due under Paragraphs 25-
3 27 of this Consent Decree.

4 D. Any stipulated payments described above shall be paid to Baykeeper within thirty (30)
5 days of notification of the failure to comply.

6 **VII. JURISIDCTION OVER PARTIES AND SUBJECT MATTER OF CONSENT DECREE**

7 31. **Jurisdiction:** For the purposes of this Consent Decree, the Parties stipulate that the United
8 States District Court of California, Northern District of California, has jurisdiction over the Parties and
9 subject matter of this Consent Decree. The Parties stipulate that venue is appropriate in the Northern
10 District of California and that Baykeeper has standing to bring the Complaint or any subsequent action
11 or motion pursuant to the Dispute Resolution procedures herein. CSL reserves all other rights and
12 defenses in any such proceeding.

13 32. **Jurisdiction to Enforce Consent Decree:** The Court referenced above shall retain jurisdiction
14 over the Parties and subject matter of this Consent Decree for the purpose of adjudicating all disputes
15 among the Parties that may arise under the provisions of this Consent Decree. The Court shall have the
16 power to enforce this Consent Decree with all available legal and equitable remedies.

17 33. **Submission of Consent Decree to DOJ:** Within three (3) business days of receiving all of the
18 Parties' signatures to this Consent Decree, Baykeeper shall submit this Consent Decree to the U.S.
19 Department of Justice ("DOJ") and EPA for agency review consistent with 40 C.F.R. § 135.5. The
20 agency review period expires forty-five (45) calendar days after receipt by DOJ, evidenced by
21 correspondence from DOJ establishing the review period. In the event DOJ declines to approve any of
22 the provisions of this Consent Decree, the Parties agree to meet and confer to attempt to resolve the
23 issues raised by DOJ.

24 34. **Dismissal of Complaint:** If there is no objection by DOJ to this Consent Decree, the Parties
25 shall (a) request the approval and entry of this Consent Decree in the exact form presented to DOJ, and
26 (b) concurrently stipulate to and request dismissal of this action with prejudice. Such dismissal shall not
27 affect the rights and obligations of the Parties under this Consent Decree, nor shall it affect the power of
28

1 the Court to enforce this Consent Decree.

2 **VIII. WAIVER AND RELEASES**

3 **35. Baykeeper Waiver and Release of Noticed Parties:** Baykeeper, on its own behalf and on
4 behalf of its officers, directors, employees, parents, subsidiaries, affiliates and each of their successors
5 and assigns releases CSL and its officers, directors, employees, members, owners, parents, subsidiaries,
6 affiliates, and each of their successors or assigns, agents, attorneys and other representatives from and
7 waives all claims which arise from or pertain to the 60-Day Notice and/or the Complaint, including all
8 claims for fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum
9 incurred or claimed or which could have been claimed for matters included in the 60-Day Notice and/or
10 the Complaint ("Baykeeper Released Claims"). During the term of this Consent Decree, Baykeeper
11 agrees that neither Baykeeper, nor its officers, executive staff, or members of its governing board acting
12 on behalf of Baykeeper, will file any lawsuit against CSL seeking relief for alleged violations of the
13 Industrial Stormwater Permit. Enforcement of this Consent Decree is Baykeeper's exclusive remedy for
14 any violation of the terms contained herein.

15 **36. CSL's Waiver and Release of Baykeeper:** CSL, on its own behalf and on behalf of its officers,
16 directors, employees, members, parents, owners, subsidiaries, affiliates, or their successors or assigns
17 releases Baykeeper and its officers, directors, employees, members, owners, parents, subsidiaries, and
18 affiliates, and each of their successors and assigns from, and waives all claims which arise from or
19 pertain to, the 60-Day Notice and/or the Complaint, including all claims for fees (including fees of
20 attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could
21 have been claimed for matters included in the 60-Day Notice and/or the Complaint ("CSL Released
22 Claims").

23 **37. Scope of Mutual Releases:** It is understood and agreed to by the Parties that the claims released
24 in Paragraphs 35-36 include all claims of every nature and kind with respect to the Baykeeper Released
25 Claims and the CSL Released Claims, whether known or unknown, suspected or unsuspected. All rights
26 with respect to the Baykeeper Released Claims and the CSL Released Claims under section 1542 of the
27 California Civil Code are hereby expressly waived. Section 1542 provides as follows:
28

1 A general release does not extend to claims which the creditor does not
2 know or suspect to exist in his or her favor at the time of executing the
3 Release, which if known by him or her must have materially affected his or
4 her settlement with the debtor.

5 The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those
6 which they now know or believe to be true with respect to the Baykeeper Released Claims and the CSL
7 Released Claims, and the Parties agree that this Agreement, including without limitation, the releases
8 contained herein, shall be and remain effective in all respects notwithstanding such different or
9 additional facts or the discovery thereof.

10 **IX. MISCELLANEOUS PROVISIONS**

11 **38. Execution in Counterparts:** The Consent Decree may be executed in one or more counterparts
12 which, taken together, shall be deemed to constitute one and the same document.

13 **39. Signatures:** The Parties' signatures to this Consent Decree transmitted by facsimile or
14 electronic mail transmission shall be deemed binding.

15 **40. Construction:** The language in all parts of this Consent Decree, unless otherwise stated, shall be
16 construed according to its plain and ordinary meaning. The captions and paragraph headings used in
17 this Consent Decree are for reference only and shall not affect the construction of this Consent Decree.

18 **41. Authority to Sign:** The undersigned are authorized to execute this Consent Decree on behalf of
19 their respective Party and have read, understood and agreed to all of the terms and conditions of this
20 Consent Decree.

21 **42. Integrated Consent Decree:** All agreements, covenants, representations and warranties, express
22 or implied, oral or written, of the Parties concerning the subject matter of this Consent Decree are
23 contained herein. This Consent Decree supersedes any and all prior and contemporaneous agreements,
24 negotiations, correspondence, understandings, and communications of the Parties respecting the matters
25 covered by this Consent Decree.

26 **43. Severability:** In the event that any of the provisions of this Consent Decree are held by a court
27 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

28 **44. Choice of Law:** This Consent Decree shall be governed by the laws of the United States or,
where applicable, the laws of the State of California, without regard to choice-of-law principles.

1 **45. Full Settlement:** This Consent Decree constitutes a full and final settlement of this matter.

2 **46. Effect of Consent Decree:** Compliance with this Consent Decree does not necessarily mean
3 compliance with the Industrial Stormwater Permit, Clean Water Act, or any other law, rule, or
4 regulation.

5 **47. No Admission:** The Parties enter into this Consent Decree for the purpose of avoiding
6 prolonged and costly litigation. Nothing in this Consent Decree shall be construed as, and CSL
7 expressly does not intend to imply, any admission as to any fact, finding, conclusion, issue of law, or
8 violation of law, nor shall compliance with this Consent Decree constitute or be construed as an
9 admission by CSL of any fact, finding, conclusion, issue of law, or violation of law.

10 **48. Negotiated Agreement:** The Parties have negotiated this Consent Decree, and agree that it shall
11 not be construed against the Party preparing it, but shall be construed as if the Parties jointly prepared
12 this Consent Decree, and any uncertainty and ambiguity shall not be interpreted against any one Party.

13 **49. Modification of the Agreement:** This Consent Decree, and any provisions herein, may not be
14 changed, waived, or discharged unless by a written instrument signed by each of the Parties.

15 **50. Assignment:** Subject only to the express restrictions contained in this Consent Decree, all of the
16 rights, duties and obligations contained in this Consent Decree shall inure to the benefit of and be
17 binding upon the Parties, and their successors and assigns.

18 **51. Notices and Submissions:** Any notices or documents required or provided for by this Consent
19 Decree or related thereto that are to be provided to Baykeeper pursuant to this Consent Decree shall be,
20 to the extent feasible, sent via electronic mail transmission to the e-mail addresses listed below or, if
21 electronic mail transmission is not feasible, via certified U.S. Mail with return receipt, or by hand
22 delivery to the following address:

23 San Francisco Baykeeper
24 Attention: Nicole Sasaki
25 1736 Franklin St., Suite 800
26 Oakland, CA 94612
27 E-mail: nicole@baykeeper.org

28 Unless requested otherwise by CSL, any notices or documents required or provided for by this
Consent Decree or related thereto that are to be provided to CSL pursuant to this Consent Decree shall,

1 to the extent feasible, be provided by electronic mail transmission to the e-mail addresses listed below,
2 or, if electronic mail transmission is not feasible, by certified U.S. Mail with return receipt, or by hand
3 delivery to the addresses:

4 CSL Operating, LLC
5 Attention: Matthew Alty
6 Valence Surface Technologies
7 128 W. 154th Street
8 Gardena, CA 90248
9 Email: matthew.alty@valencesurfacetech.com

10 *with a copy to:*

11 Peter A. Nyquist
12 Greenberg Glusker Fields Claman & Machtinger, LLP
13 1900 Avenue of the Stars, Suite 2100
14 Los Angeles, CA 90067
15 Email: pnyquist@greenbergglusker.com

16 Notifications of communications shall be deemed submitted on the date on which they are
17 emailed, or postmarked and sent by first-class mail or deposited with an overnight mail/delivery service.
18 Any changes of address or addressees shall be communicated in the manner described above for giving
19 notices.

20 52. **No Third-Party Beneficiaries.** This Consent Decree is made for the sole benefit of the Parties,
21 and no other person or entity shall have any rights or remedies under or by reason of this Consent
22 Decree, unless otherwise expressly provided for herein.

23 53. **Force Majeure:** No Party shall be considered to be in default in the performance of any of its
24 obligations under this Consent Decree when performance becomes impossible due to circumstances
25 beyond the Party's control, including without limitation any act of God, act of war or terrorism, fire,
26 earthquake, and flood. "Circumstances beyond the Party's control" shall not include normal inclement
27 weather, economic hardship, or inability to pay. Any Party seeking to rely upon this Paragraph shall
28 have the burden of establishing that it could not reasonably have been expected to avoid, and which by
exercise of due diligence has been unable to overcome, the impossibility of performance.

54. **Impossibility of Performance:** Where implementation of the actions set forth in this Consent
Decree becomes impossible within the deadlines set forth herein despite the timely good faith efforts of

1 the Parties, the Party who is unable to comply shall notify the other in writing within seven (7) business
2 days of the date that the failure becomes apparent, but in any case, before the deadline for the obligation,
3 and shall describe the reason for the impossibility of performance. The Parties agree to meet and confer
4 in good faith concerning the alleged impossibility of performance pursuant to Paragraph 29 above. If
5 the Parties concur that performance was or is impossible despite the timely good faith efforts of one of
6 the Parties, new performance deadlines shall be established. In the event that the Parties cannot timely
7 agree upon the terms of such a stipulation, either Party shall have the right to seek enforcement of this
8 Consent Decree.

9 55. If, for any reason, the Court should decline to approve this Consent Decree in the form
10 presented, the Parties shall use their best efforts to work together to modify the Consent Decree within
11 thirty (30) days so that it is acceptable to the Court. If the Parties are unable to modify this Consent
12 Decree in a mutually acceptable manner, this Consent Decree shall become null and void.

13 The Parties hereto enter into this Consent Decree, Order and Final Judgment and submit it to the
14 Court for its approval and entry as a final judgment.

15 SAN FRANCISCO BAYKEEPER

CSL OPERATING, LLC

16 Date:

Date: February 21, 2016

17 

18
19 GEORGE TORGUN
20 Managing Attorney, San Francisco Baykeeper

By: Tracy Glende
Title: Chief Executive Officer

21 APPROVED AND SO ORDERED, this _____ day of _____, 2016.

22 UNITED STATES DISTRICT JUDGE

23
24
25 HONORABLE BETH LABSON FREEMAN

1 the Parties, the Party who is unable to comply shall notify the other in writing within seven (7) business
2 days of the date that the failure becomes apparent, but in any case, before the deadline for the obligation,
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13 The Parties hereto enter into this Consent Decree, Order and Final Judgment and submit it to the
14 Court for its approval and entry as a final judgment.

15 SAN FRANCISCO BAYKEEPER

CSL OPERATING, LLC

16 Date: 2/23/2016

Date:

17 

18 _____
19 GEORGE TORGUN
20 Managing Attorney, San Francisco Baykeeper

By:
Title:

21 APPROVED AND SO ORDERED, this _____ day of _____, 2016.

22 UNITED STATES DISTRICT JUDGE

23 _____
24 HONORABLE BETH LABSON FREEMAN
25
26
27
28

EXHIBIT 1

Target Levels for Stormwater Sampling

Constituent	Target Levels	Source
pH	6.5 – 8.5 SU	<i>San Francisco Bay Basin Plan Water Quality Objective</i>
Total Aluminum	0.75 mg/L	<i>Multi-Sector General Permit 2015 Sector-specific benchmark; California Industrial General Permit 2014-0057-DWQ</i>
Total Iron	1.0 mg/L	<i>California Industrial General Permit 2014-0057-DWQ</i>
Total Zinc	0.26 mg/L	<i>California Industrial General Permit 2014-0057-DWQ</i>
Nitrate + Nitrite	0.68 mg/L	<i>Multi-Sector General Permit 2015 Sector-specific benchmark; California Industrial General Permit 2014-0057-DWQ</i>